

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2004-0825, Appeal of Linda Ferris, the court on July 6, 2005, issued the following order:**

The employee, Linda Ferris, appeals an order of the compensation appeals board (board) awarding Liberty Mutual a lien on her net recovery in an uninsured motorist claim filed after a work-related 1998 automobile accident. We affirm.

“We will overturn the board’s decision only for errors of law, or if we are satisfied by a clear preponderance of the evidence before us that the decision is unjust or unreasonable.” Appeal of Currin, 149 N.H. 303, 305 (2003) (quotations omitted).

The board found that the employee was injured in a 1999 automobile accident that resulted from a seizure caused by the 1998 automobile accident. Liberty Mutual was the workers’ compensation carrier and paid benefits to the employee as a result of both accidents. Liberty Mutual asserted a lien upon uninsured motorist benefits that the employee recovered in a third-party settlement after the 1998 accident. See RSA 281-A:13 (1999) (amended 2004). The employee’s counsel advised the carrier that it would not recognize the lien and disbursed the settlement proceeds. The carrier then sought a hearing before the department of labor to enforce its lien.

We find no error in the board’s decision. As we have previously stated, “By failing to have the settlement approved and provisions made . . . for the payment of Liberty Mutual’s lien, the [employee] risked having Liberty Mutual satisfy its statutory lien through a payment holiday.” Appeal of Scofield, 149 N.H. 344, 346 (2003) (citation omitted). The employee argues that Gelinas v. Sterling Industrial Corporation, 139 N.H. 14 (1994), and Knapp v. Tennessee Gas Pipeline, 149 N.H. 740 (2003), support her position; we disagree. In Gelinas, we held that while the carrier could not take an immediate holiday from payment, it was entitled to a lien on future anticipated payments to be made to the employee under a third-party settlement agreement. In this case, the proceeds of that third-party recovery have already been disbursed, notwithstanding Liberty Mutual’s lien. Therefore, a holiday is an appropriate means by which Liberty Mutual may satisfy its lien up to the net amount recovered from the third party.

Knapp also provides no support for the employee’s argument. In that case, the parties did not dispute the carrier’s right to a lien or holiday; rather the

issue before the court was limited to the payment scheme by which the carrier paid its share of the expenses and costs of the third-party recovery.

Nor are we persuaded by the employee's citation of subrogation law. The workers' compensation lien is a statutory creation and is based upon balancing the interests of both employer and employee. Workers' compensation benefits are paid to an employee without a finding that an employer is at fault; the purpose of the lien statute is to prevent double recovery, see Beaudoin v. Marchand, 140 N.H. 269, 271 (1995). The board's order is consistent with this purpose.

Finally, we find no merit in the employee's contention that the amount of the lien should be limited to the benefits that Liberty Mutual paid as a result of the 1998 accident. The board found that the 1999 accident was the result of injuries received in the work-related 1998 accident; the employee does not contest this finding. Because Liberty Mutual's liability therefore stems from the 1998 accident, we find that a limitation based on the amount of the benefits paid by the carrier prior to the 1999 accident is not merited in this case.

Affirmed.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox**  
**Clerk**